

~~CONFIDENTIAL~~

APR 15 1996

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Part 20 and 24 of the)
Commission's Rules -- Broadband)
PCS Competitive Bidding and the)
Commercial Mobile Radio Service)
Spectrum Cap)
)
Amendment of the Commission's)
Cellular PCS Cross Ownership Rule)

WT Docket No. 96-59

DOCKET FILE COPY ORIGINAL

GN Docket No. 90-314

To: The Commission

**COMMENTS OF
PCS DEVELOPMENT CORPORATION**

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EXECUTIVE SUMMARY

PCSD Development Corporation ("PCSD") has dealt with the Commission rules relating to qualifications as a Designated Entity and the benefits to which such entities are entitled in two wireless telecommunications services: narrowband Personal Communications Services ("PCS") and 900 MHz Specialized Mobile Radio ("SMR") Services.

PCSD supports the Commission in its efforts to afford the most favorable provision to minority/woman-owned, small businesses. PCSD suggests the Commission to adopt race- and gender-neutral rules and define small businesses in such manner that affords such members of minority groups and women which may be have been unable to create entrepreneurial businesses because of traditional lending and investment practices these favorable financial benefit without eliminating the flexibility to pursue both non-traditional and traditional investment and financing opportunities.

PCSD reiterates its support of installment payment plans to encourage the development of new businesses, and urges the Commission to retain the six year interest only payment term in the broadband PCS rules and initiate action to adopt a similar time period for installment payment plans in other services. Moreover, PCSD encourages the Commission to provide more opportunities for new businesses to acquire additional licenses and make the favorable financial benefits available to small businesses which wish to participate in the D and E Block auction.

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**COMMENTS OF
PCS DEVELOPMENT CORPORATION**

PCS Development Corporation ("PCSD"), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully submit its comments to the Notice of Proposed Rule Making ("Notice") adopted by the Commission on March 20, 1996 in the above-styled proceeding.¹

I. Introduction

PCSD, qualifying as a minority/woman-owned, small business, obtained five narrowband Personal Communications Services ("PCS") regional licenses by auction. Further, a subsidiary of PCSD currently is a bidder in the ongoing 900 MHz Specialized Mobile Radio ("SMR") Service auction and, for purposes

¹ Notice of Proposed Rule Making (FCC96-119), WT Docket No. 96-119/GN Docket No. 90-314, 10 FCC Rcd ____ (1996).

of this auction, is considered a small business eligible for a 10% bidding credit and Installment Plan A should it be the high bidder on any license.

Having dealt with the FCC's rules governing qualifications and benefits provided as a Designated Entity in two FCC auctions, PCSD takes this opportunity to provide its experiences and its suggestions in regard to the adoption of rules which govern the definition of "Designated Entity" and the benefits to which such entities are eligible based on such designation. PCSD supports the Commission's efforts to structure rules which result in competitive opportunities for small businesses and permit all licensees and potential licensees in all wireless services to be competitive.

II. Discussion

A. Define "Small Business" to Encompass Minority/Women Owned Businesses

The existing rules in the broadband PCS service governing competitive bidding procedures provides additional financial benefits to applicants for the F Block licenses which qualify as a minority/woman-owned business. As a result of the decision by the U.S. Supreme Court in Adarand Constructors, Inc. v. Peña,² which imposed a strict standard of review of federal race-based affirmative action programs, the Commission amended the competitive bidding rules governing the C Block auction to eliminate any race- and gender-based preferences. The Commission now is considering whether to amend the

² 115 S.Ct. 2097 (1995).

competitive bidding rules governing the F Block auctions in a manner similar to the rules governing the C Block auction, or retaining the F Block rules.

PCSD encourages the Commission to eliminate the provisions of the competitive bidding rules governing F Block licensing which are specifically based on meeting the definition of a minority/woman-owned business. For example, the Commission's definition of minority/woman-owned businesses in the narrowband PCS rules erected the same barrier to entry of such entities into the industry which Congress and the Commission sought to eliminate; primarily because the Commission required that the control group of minority/woman owned to be composed 100% of members of minority groups and/or women who are U.S. citizens.³ Minority/woman-owned businesses, which were controlled by members of minority groups or women, but not 100% owned by such persons, could not become active participants of the narrowband PCS applicants. These entities, therefore, were relegated to merely a passive investment role which PCSD submits does not produce the opportunities to members of minorities and women which the Commission sought to create.

Typically, however, the minority/women-controlled businesses met the criteria of a small business. Had the Commission rules not distinguished between minority/woman-owned business and small businesses in determining

³ In the Second Report and Order (FCC 94-61), PP Docket No. 93-253, 9 FCC Rcd 2348, para. 277 (1994), the Commission specifically stated that businesses which were members of the control group were required to be 100% owned by members of minority groups or women.

whether PCSD was eligible for the various financial benefits, these businesses could have become active in a telecommunications company. Accordingly, PCSD suggests that the Commission craft a definition of a small business which will provide actual assistance to individuals and entities which would otherwise be economically precluded from acquiring an FCC license, or actively participating in the management of a company holding such FCC license. In this manner, the Commission would better serve minority/women-owned businesses by furnishing greater opportunities in the telecommunications industry.

B. Control Group Equity Structures

The rules governing eligibility to bid on the broadband PCS "F" Block require an applicant, together with its affiliates and persons or entities that hold interests in the applicant, to have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. Under the current rules, the gross revenues and total assets of certain persons or entities holding interests in an applicant will not be considered for purposes of determining eligibility to participate in the F block auction if the applicant utilizes one of two equity structures. One equity structure is available only for minority/women-owned businesses.

As stated above, PCSD suggests the Commission eliminate any special provisions for minority/women-owned businesses and permit small businesses to take advantage of any provision which was previously granted only to

minority/women owned businesses. Accordingly, small businesses would be allowed to meet either of the two equity structures.

C. Affiliation Rules

The Commission seeks comment on whether to modify the exceptions to the affiliation rules which excludes the gross revenues and assets of certain individuals and entities from being attributed to an applicant in determining qualification as an entrepreneur and a small business. The Commission proposes to retain the exception relating to applicants affiliated with Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska native Claims Settlement Act.⁴ It, however, proposes to modify the exception relating to minority investors similar to the manner in which it modified the exception as it relates to the C Block licenses.

PCSD supports the Commission's proposal to modify the exception for minority investors to encompass small business investors. This modification will permit newly-created business to access additional capital and provide more opportunity for smaller businesses and individuals which are members of minority groups and women to invest in and obtain experience in the telecommunications business. The capital necessary to obtain a license in the F Block and construct the infrastructure to meet the Commission's rules may not be as great as that necessary for licenses in the C block. Nevertheless, PCSD envisions that an F Block applicant may be required to expend an 8 figure

⁴ 43 U.S.C. § 1601 *et. seq.*

amount to effectively compete in one Basic Trading Area ("BTA"). Therefore, such applicants may require to pool the resources of a number of small businesses and individuals.

D. Installment Payments

Under the existing competitive bidding rules governing the licensing of the F Block, five different installment payment plans are available. Two of the installment plans are for those entities which do not meet either the criteria for small business and/or minority/woman-owned businesses. One of the installment plans is for those applicants considered small businesses; one for those applicants considered minority/woman-owned businesses; and one for applicants considered minority/woman-owned, small businesses. The Commission proposes to reduce the installment payment plans to three by retaining the installment payment plans for those entities which do not qualify as small businesses and providing the most favorable installment payment plan, i.e., interest only payments for six years, to entities meeting the definition of a small business. It seeks comments on whether the interest only payment period should be reduced.

Consistent with its prior remarks, PCSD supports the Commission's proposal to adopt the three-tier installment payment plan. PCSD urges the Commission to retain the six-year interest only period for installment payments. Moreover, PCSD asserts that the six-year interest only installment payment plan should be adopted in all services in which licenses are issued by auction.

PCSD qualified under the Commission's narrowband PCS rules as a minority/woman-owned, small business which resulted in it receiving a 40% bidding credit against its aggregate winning bids and paying 90% of the winning bid less the 40% bidding credit over a period of 10 years with interest only payments for two years. Of the two financial benefits, the installment payments have been most advantageous. No actual financial benefit accrued to PCSD through the use of bidding credits because, after the application of the credit, the price paid for its license was equal to or more than the larger companies paid for equivalent narrowband PCS licenses.

The amount of spectrum allocated in the F Block is less than that allocated in C Block and may result in the winning bids being proportionally less. Nevertheless, as discussed above, PCSD submits that the capital necessary to acquire and build out just one BTA will be substantial -- PCSD estimates at least eight figures. In the 900 MHz SMR competitive bidding rules, the Commission afforded the very small businesses an installment plan with five years of interest only. The resources necessary to acquire and construct these systems (each license has .25 MHz of spectrum as compared to 10 MHz of spectrum allocated to the F Block). PCSD suggests that persons acquiring F Block licenses will need the additional reduced payment schedule to effectively compete with larger, incumbent telecommunications companies. Accordingly, PCSD discourages the Commission from reducing the period in which installment only payments may be paid.

E. Definition of Small Business

PCSD believes that a proper definition of small business will afford sufficient financial benefits to minority/woman-owned businesses that the Congress and the Commission were seeking to assist. PCSD urges the Commission to retain its current definition of a small business, i.e., one which has average gross revenues for the preceding three years of not more than \$40 million. Even with the proportional decrease in the value of the F Block license, the amount of resources necessary to acquire a license and the infrastructure necessary to construct the system in accordance with the Commission's requirements will still be significant. Should the Commission lower the threshold, it may disadvantage those companies which have sufficient capital to raise the capital necessary to acquire the licenses and buildout the system, but still require assistance to compete with larger, better financed telecommunications companies.

F. Extending Small Business Provisions to the D and E Blocks

PCSD urges the Commission to apply the small business provisions to the D and E blocks. The bidding credits, however, must not be significantly decreased and all licenses must be subject to the application of the bidding credits. Further, the installment payment plans for small businesses must also be available to acquire all licenses.

Channeling small businesses to the entrepreneurs' block and/or the designation of only a limited number of channels to which financial preferences

may be applied are contrary to Congress' and the Commission's intent to promote diversification of licensees and encourage the creation of new business. The Commission, by channelling small businesses to a limited number of channels, affords larger telecommunications companies an opportunity to acquire more spectrum with substantially less competition. PCSD believes that the diversification of the licensees is increased when the Commission requires the larger companies to compete with small businesses for the licenses. Of course, without bidding credits, the small businesses would be substantially disadvantaged and have little hope of acquiring any D and E block licenses.

The inability of smaller businesses to effectively compete in auctions with larger companies without significant bidding credits was demonstrated by the results in the nationwide narrowband PCS auction. In the regional narrowband PCS regional auctions, the amount of bidding credits available to Designated Entities were increased, but such bidding credit was available to be applied to winning bids for two of the six frequencies being auctioned. Of the ten licenses aggregately available for these two frequencies, all were awarded to Designated Entities.⁵ No Designated Entity, however, was awarded a license for a frequency which a bidding credit was not available. Even after application of the bidding credits to the winning bids, the Designated Entities effectively paid

⁵ Although ten licenses were awarded to Designated Entities, only three separate companies acquired such licenses.

the same price for their licenses as compared to the large, incumbent telecommunications companies which acquired similar licenses. In effect, the Commission created a bidding war between the small businesses and artificially increased the value of those licenses, while permitting the large companies to acquire the licenses at the "reduced" value.

In the 900 MHz SMR auction, where small businesses may use their bidding credits for all licenses, the competition for bidding has been vigorous and active. There is a significant number of small businesses which may ultimately obtain a 900 MHz SMR MTA license. Thus, the ability of small businesses to bid on all licenses with the favorable financing benefits results in more diversification of licenses as well as a more realistic valuation of the licenses.

III. Conclusion

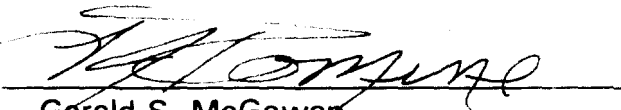
PCSD supports the Commission in its efforts to afford the most favorable provision to minority/woman-owned, small businesses. The difficulty, of course, is structuring rules which afford such advantages to the intended beneficiaries. As PCSD discovered, the current narrowband PCS rules which provide specifically for minority/woman-owned businesses erect the same barriers to businesses generally considered minority/woman-owned businesses that the Commission intended to eliminate. Therefore, PCSD urges the Commission to adopt race- and gender-neutral rules and define small businesses in such manner that affords such members of minority groups and women

which may be have been unable to create entrepreneurial businesses because of traditional lending and investment practices these favorable financial benefit without eliminating the flexibility to pursue both non-traditional and traditional investment and financing opportunities.

PCSD remains a supporter of installment payment plans to encourage the development of new businesses, and urges the Commission to retain the six year interest only payment term in the broadband PCS rules and initiate action to adopt a similar time period for installment payment plans in other services. Moreover, PCSD encourages the Commission to provide more opportunities for new businesses to acquire additional licenses and make the favorable financial benefits available to small businesses which wish to participate in the D and E Block auction.

Respectfully submitted,

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